IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7533 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMILABEN CHANDUBHAI ASARI SOLE PROPRIETOR

Versus

VADODARA URBAN DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 7533 of 2004

MR VD PARGHI for Petitioner No. 1

MR MD PANDYA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1

MS REETA CHANDARANA, Ld. AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/12/2004

ORAL JUDGEMENT

Leave to join District Collector, Vadodara as party respondent.

Notice to the newly added respondent. Ms.Reeta Chandarana, learned AGP waives service of notice on behalf of newly added respondent.

3. The petitioner has preferred this petition for appropriate directions to the respondents to issue the development permission to the petitioner in respect of the land bearing Survey No.686 paiki admeasuring 1384 sq. mtrs. for construction of LPG Godown and Office.

4. Heard Mr.Dagli, learned Counsel for Mr.Parghi appearing on behalf of the petitioner, Mr.M.D.Pandya, learned Counsel for respondent No.1 and Ms.Reeta Chandarana, learned AGP for respondent No.2 and newly added respondent.

5. Upon hearing the learned Counsel for the parties, it appears that there is no dispute on the factual position that the land is allotted by the District Collector on 1.1.1998 to the petitioner for construction of LPG godown and office. It is the case of the petitioner that the petitioner has paid the requisite amount of Rs.5,32,840/= and thereafter the possession of the land is also handed over. Since one of the conditions in the allotment order was to get development permission from respondent No.1, the petitioner applied for such permission, but such permission has been denied by respondent No.1 on the ground that the land is a part of water body (pond). The Division Bench of this Court (Coram: R.K.Abichandani, J. - as he then was - and D.A.Mehta, J.) in SCA No.10621/2000 and allied matters, as per the decision dated 2.8.2002 has prohibited the use for construction purpose of the land covered by any water body, pond, reservoir etc. and such water bodies are to be preserved. It appears further that the State Government thereafter, in view of the aforesaid decision of this Court, has also directed all the authorities to maintain the water bodies situated in the periphery and it is the case of respondent No.1 Authority that in view of the said decision it is not possible for respondent No.1 to grant any development permission in favour of the petitioner over the land in question.

6. It appears that because of the aforesaid subsequent circumstances beyond the control of the petitioner now the land cannot be used for construction of godown and office for LPG as it was proposed by the petitioner. It also appears that the petitioner is

belonging to backward class and he has paid up the amount for the land in question. Since the use of the land for construction of godown and office is not permissible as per the development plan prepared by respondent No.1, it would be a case for respondents No.2 and 4 to sympathetically consider the matter for allotment of other waste land, if available with the government for allotment for such purpose. I am inclined to make such observations because due to the circumstances beyond the control of the petitioner the use of the land for construction of the godown and office has become impossible and such impossibility has arisen on account of the judgement of this Court and also the policy decision taken by the State Government based on the decision of this Court. Ultimately, it will be for the State Government and the District Collector to finalise the issue in this regard as per its policy.

7. Under the circumstances, the reliefs prayed by the petitioner in this petition cannot be granted. However, it is observed that if the petitioner moves appropriate application to respondent No.3 for allotment of alternative land, the same shall be considered sympathetically and in light of the aforesaid observations made by this Court and appropriate decision shall be taken and communicated as early as possible, preferably within a period of four months from the date of making such application.

The petition is disposed of accordingly. Rule discharged. There shall be no order as to costs.

10-12-2004 (Jayant Patel, J.)

vinod